

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN RAPILLO and HEIDI RAPILLO,

Plaintiffs,

- against -

Docket No.: 09-CV-10429(VSB)

BARRY FINGERHUT, DAVID HOLZER,
FINGERHUT-HOLZER PARTNERS LLC,
FINGERHUT-HOLZER EQUITIES, INC.,
FINGERHUT-HOLZER, INC., FINGERHUT-
HOLZER FUND L.P., GEO CAPITAL
PARTNERS, INC., FINGERHUT-HOLZER
THE WAVERLY I, LLC, FINGERHUT-
HOLZER THE WAVERLY II, LLC,

**AFFIRMATION OF ROBERT J.
CONWAY**

Defendants.

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ROBERT J. CONWAY, an attorney duly admitted to practice law in the State of New York affirms the following statements are true under the penalty to perjury:

1. I am a member of the firm of Marshall, Conway & Bradley, P.C. This office represented the plaintiffs JOHN RAPILLO and HEIDI RAPILLO through a lengthy litigation attempting to recover \$1,900,000.00 in lost funds from David Holzer, Barry Fingerhut, and a number of their established interests. The case was litigated before United States District Judge Vernon S. Broderick. Following the completion of all pre-trial discovery, counsel for the Defendant, Fingerhut and his companies made a motion to dismiss the action of the plaintiff which was successful. The decision of the court functionally ended the litigation. Plaintiffs' counsel is prepared to accept the rulings of the court. The plaintiffs are not. As a result there has been a breach of confidence between the parties.

2. The individual plaintiffs wished to appeal the case to Circuit Court of Appeals. We believed that there was no working ground for such appeal. We filed the necessary papers to protect the plaintiffs' rights to appeal but then had to ask the Court to be relieved from going forward with an appeal that was without merit. Such motion was made and granted by the Circuit Court of Appeals.

3. We find ourselves in dispute with our clients at this time. They are not prepared to accept the disposition of the Court. They are seeking to keep the case open as long as possible while attempting to convince the District Attorney for New York County to open a criminal file of David Holzer to which we have been denied access for five years. They are requesting the intervention of the Court in opening the file. They need the engagements of expert accountants, forensic investigators and other experts in a matter that cannot be countenanced by counsel.

4. We have had an unfortunate disagreement on issues of whether to go forward or how to go forward. The individual plaintiffs wished to pursue remedies that counsel can not countenance as being meritorious.

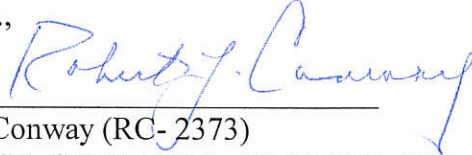
5. As a result and with great regret we ask the Court to be relieved as counsel so that John Rapillo and Heidi Rapillo can proceed forward in whatever fashion they deem appropriate and pursue the matter as they see fit.

6. We are not asserting a lien on this file.

7. Counsel hereby requests that they be relieved of any further obligations to John Rapillo and Heidi Rapillo and that Mr. and Mrs. Rapillo proceed forward Pro Se seeking whatever relief they deem appropriate for their interest.

Dated: New York, New York
January 6, 2017

Yours, etc.,



Robert J. Conway (RC- 2373)
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